

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7)(B) to Ensure)	WT Docket No. 08-165
Timely Siting Review and to Preempt Under)	
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals as)	
Requiring a Variance)	

COMMENTS OF ALLTEL COMMUNICATIONS, LLC

Pursuant to the Public Notice of the Federal Communications Commission (“FCC” or “Commission”),¹ Alltel Communications, LLC (“Alltel”) respectfully submits these Comments on the Petition for Declaratory Ruling of CTIA-The Wireless Association (“CTIA”).² Alltel supports CTIA’s Petition and respectfully requests that the Commission establish as soon as possible specific time frames for zoning authorities to act on applications for the siting of wireless facilities, pursuant to Section 332(c)(7)(B) of the Communications Act (“the Act”).³ Without imposing on zoning authorities an obligation to act on siting applications, wireless carriers’ ability to enhance and extend their wireless coverage is being slowed, and in some cases, prevented altogether.

¹ *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA – The Wireless Association to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, DA 08-1913, released August 14, 2008.

² In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Declaratory Ruling*, WT Docket No. 08-165, filed July 11, 2008 (hereinafter “Petition” or “CTIA Petition”).

³ 47 U.S.C. §332(c)(7)(B).

Therefore, the Commission can serve the public interest and appropriately balance the interests of consumers and zoning authorities by granting the relief requested by CTIA.

BACKGROUND

In July, CTIA filed its Petition asking the Commission to provide more certainty around local zoning processes for constructing and deploying wireless facilities. Specifically, CTIA asked that the Commission clarify what constitutes “a failure to act” under Section 332(c)(7)(B)(v) of the Act by establishing specific, reasonable time frames for reviewing and disposing of siting applications for wireless facilities.⁴ Pursuant to the Act, if a carrier seeks to challenge a zoning authority’s action (or, more specifically, the lack thereof), the carrier must challenge the zoning authority in court “within 30 days after ... [the authority’s] failure to act.”⁵ Currently, however, there is no specific time frame defining when a zoning authority has in fact failed to act; thus, carriers have no ability to challenge a local authority and move the siting process forward when no decision has been issued. By establishing a reasonable time frame, and requiring that a “non-decision” be deemed an application grant,⁶ as proposed by CTIA, the Commission can achieve the appropriate balance Congress sought when it enacted Section 332(c)(7). That is, zoning authorities will retain control over zoning/siting decisions, but the construction of wireless facilities will not be improperly impeded, and consumers’ interests will be promoted through improved wireless coverage and services.

⁴ CTIA Petition at p. 20.

⁵ 47 U.S.C. §332(c)(7)(v).

⁶ CTIA Petition at p. 27. Alternatively, CTIA requests that an application be presumed granted if the zoning authority fails to act. *Id.*

In the Petition, CTIA also sought two additional FCC actions: (1) clarification that a zoning authority cannot prohibit the construction and operation of a cell site on the basis that there already is a wireless provider serving the zoning authority's area;⁷ and (2) preemption of local zoning laws/ordinances/rules that treat all wireless siting applications as requiring a variance.⁸ Both of these requested FCC actions are justified by the facts described below and in CTIA's Petition. Without action by the FCC, the buildout of wireless service will continue to be frustrated, delayed and, in some cases, unjustly prevented – a result wholly at odds with consumers' interests in improved wireless coverage and service reliability.

DISCUSSION

Alltel is the Nation's fifth largest wireless carrier, and in terms of the geographic coverage of its network, Alltel is the largest wireless carrier in the Nation, covering mostly rural and less populated areas. Alltel continues to add new cell sites/antennas to its network to both extend its footprint and improve coverage within areas it already serves. Alltel's experience in deploying these new cell sites has been, in many cases, a negative one filled with unnecessary obstacles and delay as zoning authorities attempt to slow or prevent the addition of new wireless facilities in their localities. In support of CTIA's Petition, therefore, Alltel provides the following examples of its experiences demonstrating the need for more certainty in the process of siting wireless facilities.

Given that many zoning authorities are able to grant zoning applications within 30-60 days, Alltel believes that localities cannot justify taking years to act upon properly filed applications. For example, Alltel experienced a delay of *four years* and seven

⁷ *Id.* at pp. 31-32.

⁸ *Id.* at pp. 36-37.

months for a decision on simply collocating an antenna on an existing structure. In this case, the siting authority demanded that Alltel file and re-file several variance requests, taking months to review each resubmitted request, and finally required a state land appraisal that consumed an additional nine months. Although Alltel ultimately was permitted to collocate its antenna on the existing structure, the unnecessary years long delay deprived consumers of improved service quality without justification. Currently Alltel has a number of collocation applications that have been pending for well over a year – a time period that cannot be justified for approving the mere collocation of an antenna. Similarly, Alltel has experienced numerous unnecessary delays in obtaining approvals for new towers. For example, one Alltel tower was delayed for *three years* and 11 months while awaiting action by a zoning authority, and Alltel has more than 20 applications pending for new towers or modified towers that are now more than one year old. These examples are extreme cases, but they are critical to the Commission’s decision-making process in that they demonstrate how the cell siting process can be stalled, sometimes indefinitely, if there is no clearly defined time limit on a zoning authority’s “failure to act” within the context of Section 332(c)(7)(B)(v) of the Act.

Setting aside the extreme examples above, Alltel’s experience in siting wireless facilities has been that siting decisions are provided largely within the timelines CTIA has proposed: 45 days for decisions on collocation requests and approximately 75 days for other siting requests.⁹ Thus, Alltel agrees that 45/75 days are reasonable time frames within which a zoning authority can review an application (assuming it has been properly filed and provides all required information) and issue a decision. The most typical

⁹ *Id.* at p. 24 (recommending 45 days for a collocation “failure to act”) and pp. 25-26 (recommending 75 days for “failure to act” on all other siting applications).

reasons for delay beyond these timelines include not only administrative roadblocks (*i.e.*, lack of resources or lack of appropriate processes and procedures) but also the introduction of politically-motivated hurdles and third-party “reviewers” who impose unnecessary costs and rigorous procedures that burden the zoning process and therefore slow it down and increase costs.¹⁰ By imposing the proposed time frames within which zoning authorities must act, the Commission can ensure that there is sufficient time for zoning authorities to review and analyze siting applications while also bringing an end to the unjustified delay tactics used by some zoning authorities.

A specific timeline on cell siting decisions, moreover, would provide consistency across localities and zoning authorities. In today’s siting environment, decisions on Alltel’s applications have varied from only one day to nearly five years, as noted above. This inconsistency increases the complexity of operating and improving Alltel’s wireless network. With the assurance that a decision will be made in a few months’ time, as proposed by CTIA, Alltel can more accurately forecast, budget and plan for the construction and deployment of new wireless facilities. This improved planning process will enhance the efficiency of Alltel’s network buildout, reduce the cost of deploying new cell sites, and thereby improve the overall customer experience.

Finally, Alltel agrees with the additional actions CTIA has requested of the FCC. They too are critical to improving the cell siting process, and thereby improving wireless coverage for consumers. First, Section 332(c)(7)(b)(i) bars zoning decisions that “prohibit or have the effect of prohibiting the provision of personal wireless services.”¹¹

¹⁰ For example, in some localities Alltel has been required to follow procedures that include the filing of applications that are well over 40 pages – even for the simple collocation of an antenna on existing cell site.

¹¹ 47 U.S.C. § 332(c)(7)(B)(i).

Some localities have interpreted this section as barring only the first wireless carrier providing service in their local area, thus allowing the locality to deny siting applications of competitors to that first entrant.¹² As CTIA explains in its Petition, Congress intended to *promote competition* in the 1996 Telecom Act, including promoting competition among wireless carriers.¹³ Therefore, the prohibition on denying entry in Section 332(c)(7)(B)(i) must apply to all wireless competitors in a market; not just the first carrier in the area. To interpret the provision otherwise would be nonsensical in the context of Congress' pro-competitive goals in adopting this provision in the 1996 Telecom Act.

Moreover, pursuant to Section 253 of the Act, the Commission has the authority to preempt local laws/rules/regulations that have the effect of prohibiting the entry of new wireless services.¹⁴ Any attempt by a zoning authority to treat every wireless siting application as a variance – thus significantly increasing the burden for approval, as well as the processes, procedures and time required for that approval – is just such a barrier to entry. The variance process is being used by many jurisdictions to delay and prevent the deployment of additional wireless coverage. As such, the Commission should preempt this zoning tactic as a barrier to entry prohibited by Section 253 of the Act.

CONCLUSION

Section 332(c)(7) was enacted to achieve a balance between the authority of local zoning boards to manage the construction of cell sites in their localities and the need to improve wireless services through the addition of those wireless facilities. The

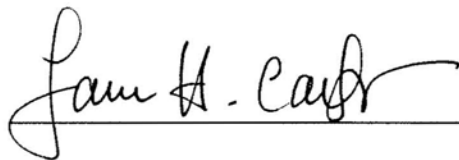
¹² CTIA Petition at p. 31.

¹³ *Id.* at p. 31.

¹⁴ 47 U.S.C. §253(a).

Commission, therefore, should act on CTIA's Petition to ensure the effective operation of this section by removing the remaining roadblocks to the siting of wireless facilities while also maintaining the authority of zoning boards to protect their citizens through proper oversight of wireless facilities' siting. This is the balance that Congress intended in Section 332(c)(7) and in granting CTIA's requests, the Commission can achieve that balance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura H. Carter", is written over a horizontal line.

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September 29, 2008